

SENTENCING COMMISSION MINUTES

Committee	Utah Sentencing Commission
Date	Wednesday, October 7, 2015
Time	Noon – 2 p.m.
Location	Utah State Capitol, Senate Caucus Room
Members Present	Patrick Anderson, Judge Mark Andrus, Chyleen Arbon, Craig Barlow, Paul Boyden, Debbie Whitlock for Susan Burke, Darin Carver, Rollin Cook, Sen. Gene Davis, Al Emery, Scott Garrett, Rachelle Hill, Rep. Brian King, Judge Thomas Low, Judge Julie Lund, Richard Mauro, Rep. Marc Roberts, Peter Stirba, Sheriff James Tracy, Judge Vernice Trease, Pam Vickrey, Christina Zidow
Members Excused	Shima Baradaran, Chief Craig Black, Judge Michele Christiansen, Ron Gordon, Senator Dan Thatcher
Staff & Visitors	Staff: Jo Lynn Kruse, Cuong Nguyen, Doreen Weyland Visitors: Krista Airam, Susan Allred, Anna Brower, Dan Blanchard, Mike Haddon, Kent Hart, Marina Lowe, Senator Aaron Osmond, Chris Packard, Dawn Marie Rubio, Gary Syphus, Ray Wahl
Agenda Item	Welcome – Approval of Minutes
Notes	Peter Stirba called the meeting to order and welcomed everyone. Patrick Anderson made the motion to approve the August minutes. Richard Mauro seconded the motion which passed unanimously .
Agenda Item	Brief Update on Implementation of JRI – 2015 Adult Sentencing Guidelines and Recognition of 2nd District AP&P for Implementation Pilot of the RIM
Notes	Jennifer gave a brief update on what has been happening since the last meeting on August 5 th . Jennifer has given approximately 15 presentations on the guidelines to AP&P agents throughout the state, the Judicial conference, Salt Lake Legal Defenders, and municipal prosecutors. Jennifer presented AP&P Northern Region 2 nd District an award for their dedicated work and implementation of RIM (Response and Incentive Matrix).
Agenda Item	The Juvenile Justice System and the Sentencing Commission's Role (tape 6:40)
Notes	<p>Review of SB167 – Senator Osmond stated that this bill was intended to ensure that the individual circumstances of juveniles sent to adult courts are taken into consideration. One of the biggest changes from SB167 was to the SYO (Serious Youth Offender) portion of statute by adding additional criteria associated with transfers. The bill also addresses the incarceration of youth upon a prison commitment from adult court and allows the judge to place the juvenile in a juvenile facility until age 18 which may be determined more appropriate at the time of sentencing. A presumption against shackling was also established, but the Judicial Council was given latitude to develop the specific rules for the use of restraints in court. Pam Vickrey also commented on the bill indicating that in addition to the transfer of jurisdiction from juvenile to district court and routine shackling of juveniles in court, the bill also addressed the issue of appointment of counsel for youth. This has probably been the area with most questions and concerns since its passage because a knowing and voluntary waiver is required for felony offenses. The initial proposal was to apply it to all offenses, but due to county budgetary concerns and data from the AOC, a compromise of felonies only was reached. Jennifer distributed a written summary of the data, research and discussion regarding SB167.</p> <p>Jennifer reviewed the purpose and duties of the Sentencing Commission as stated in 63M-7-404: (1) The purpose of the commission shall be to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council about the sentencing and release of juvenile and adult offenders in order to: (a) respond to public comment; (b) relate sentencing practices and correctional resources; (c) increase equity in criminal sentencing; (d) better define responsibility in criminal sentencing; and (e) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority. Utah's juvenile guidelines have not been updated since 2004 and the matrix itself is actually from 1997. In 2014, the Commission tasked the Juvenile Subcommittee with revising the prefatory language, reviewing and updating aggravating/mitigating factors especially as they relate to sex offenses, and reviewing and updating the matrix itself. Revising the prefatory language was completed in 2014. Tasks remaining are to review the guidelines/dispositional matrix and aggravating/mitigating factors.</p> <p>Summary of 2014 Legislative Audit of JJS – The Legislative Audit of JJS indicates that Utah has a higher recidivism rate (53.1%) than three other states (Colorado - 28.7%, Idaho – 30.4% and Arizona – 33.4%).</p> <p>Summary of 2014 University of Utah LOS Report – Optimal lengths of stay is defined as: To the extent that the goal of criminal justice agencies is rehabilitation and avoidance of greater harm in the juvenile delinquent population, the appropriate LOS for youth is properly defined as the minimum amount required for rehabilitation (which is determined by a myriad of factors that include type, duration and intensity of programming that is matched to a delinquent youth's level of risk).</p>

The correlation between the YPA guideline and actual LOS was only .441, indicating that the guideline only explained 19.5% (.441²) of the variance in actual LOS. If the guidelines were closely followed for release decisions, we would expect these values to be closer to 1.0 and 100% respectively. The fact that they are not closer to these values is not necessarily troubling, however, because several contextual factors influence the results in the direction of longer actual lengths of stay relative to the YPA guidelines⁹.

There were recommendations to the YPA guidelines. The quantitative component of this study indicated that the relationship between the guideline and actual LOS was relatively weak. Also, the guidelines do not effectively serve their intended purpose. Without taking into account the typical range of time youth with similar histories take to demonstrate rehabilitation, the guidelines will continue to be inaccurate, and will serve instead to set only a lower-bound for LOS.

Summary of Council of State Governments 2015 Report - Susan Burke summarized much of this information during her presentation to the Commission in April 2015. In Utah's juvenile justice system, probation is juvenile court operated, whereas the long-term state community placements and secure facilities are operated by JJS. Detention and early intervention services are operated by JJS as well. Principle number one of the Core Principles for Reducing Recidivism and Improving other Outcomes for Youth in the Juvenile Justice system, i.e. is basing supervision, service, and resource allocation decisions on the results of validated risk and need assessments. That is also consistent with what has been discussed with regard to JRI in the adult system. CSG found that the majority of youth admitted to detention are not due to felony offenses, and that lower risk youth are staying longer than the high risk youths. Recommendations were made to use objective criteria to improve supervision and service decisions. Also concerning is that few evidence based services are available to youth in the community. Thirty five states have implemented the "big 3" EBP's (MST, FFT, MTFC) at scale statewide. Utah is not among them. Findings included that forty percent of recidivism events occurring in the year after release from residential placement occur within the first three months; resources are not being maximized to ensure youth receive effective services; and there is a high reliance on residential placement as a response to contempt offenses. There is a need to use objective criteria to improve supervision and service decisions. The Sentencing Commission was not included in the collaborative effort with CSG. Jennifer has inquired of CSG as to why the Sentencing Commission was not included and why the guidelines were not specifically analyzed. They indicated that they did not perceive the juvenile guidelines had any actual impact on placement or release decisions.

Update from Juvenile Justice Services – Debbie Whitlock, Deputy Director for JJS, reported for Susan Burke. Debbie noted that JJS was working on systematic changes that needed to be made to the system before the assessment and LOS study was done and then the economic downturn and budget cuts of 2008 occurred. JJS piloted an in-home O & A project in 3rd District Juvenile Court and has re-bid their residential contracts with out-of-home treatment centers for youth. JJS is now in the process of awarding new contracts for treatment services. JJS has implemented a certification process for all their program directors, supervisors, and case managers. They must certify on JJS' case planning model, centered on "what works". JJS also implemented two new evidence-based curricula into their long-term care facilities. The long-term secure unit for girls has moved to Farmington Bay. JJS has also adjusted the "dosage" on low risk offenders and is now using evidence-based practices there. Adjustments have also been made to the work-camp program. JJS would like to hire a medical director in the future.

Update from Youth Parole Authority on LOS Matrix – Chris Packard, Administrative Officer, Youth Parole Authority, discussed changes to the Length of Stay matrix. The YPA was established in 1986 and has the authority and responsibility for parole release, rescission, revocation, and termination for youth offenders who have been committed to the division for secure confinement. The authority determines when and under what conditions youth offenders who have been committed to a secure facility are eligible for parole. The LOS matrix was originally modeled after the adult system and has mostly remained unchanged until this time. Based on the University of Utah Length of Stay study, the YPA has identified a need for the matrix to be refined and changed to accurately reflect the direction that the Juvenile Justice Services is going. YPA has also increased the training available to YPA members both through a statewide conferences, online training, and annual meetings. YPA developed a Secure Care YPA rating scale. Prior to that, all youth we rated poor, moderate, good or excellent. A group was formed to develop a more objective rating. The new model is much more consistent than those previously used. New training starts this month and should be fully implemented by the end of the year. Other changes being made are changing review cycle to a 90 day cycle. Revisions have been made to reflect more of a range of time available, rather than a specific amount.

Update from Juvenile AOC – Dawn Marie Rubio, Juvenile Court Administrator, distributed a flyer which describes Utah Juvenile Court operations generally and a second handout titled Time Line of the Implementation of Evidence Based Practices in the Utah Juvenile Justice System. Dawn Marie first talked about the implementation of EBP. In 1999 a risk assessment was adapted and implemented for the juvenile justice system. A case planning model was devised in 2001, to include use of the Stages of Change and adopting the "What Works" principles. Since 2007, the juvenile court has utilized the Correctional Program Checklist (CPC). Juvenile court delinquency referrals have declined by 38% from fiscal year 2008 to 2015. Utah's decline appears to track a national trend and research statistics indicate that delinquency cases dropped 27% from 1997 to 2010. They expect that referrals will continue to decline over the next few years. The decline in referrals presented

	<p>opportunities for the juvenile court and its probation staff to fully transition. Dawn Marie spoke about the 2008 budget reductions which still have not been restored. The Juvenile AOC is working on the development of an incentives and sanction matrix for technical violations of probation and violations of court order. About a year ago, the juvenile court began the process of developing a formalized incentive and sanctions matrix for technical violations of probation and JJS joined us about six months ago in that effort, again with the idea of having the same response to youth system-wide. The chief probation officers are in the process of vetting the matrix internally with supervisors and staff. The matrix will be presented to the Board of Juvenile Court Judges in the Spring and would then be incorporated into juvenile court probation policies and then implemented state-wide by the Summer of 2016. Dawn Marie did not indicate the Sentencing Commission or any other organizations would be included in the development or approval of the matrix. The JAOC is also looking into including substance abuse and mental health screening assessments in the juvenile court process. Currently the chief probation officers have been tasked with recommending a specific screening instrument such as MAYSI-2. JAOC is also reviewing their case planning curriculum.</p> <p>“Comprehensive Strategy” – Darin Carver, Clinical Practice Administrator, Weber Human Services, spoke about developmental pathways to serious and violent delinquency. There are three pathways to become a serious violent and chronic offender: Violent pathway (minor aggression, physical fighting and violence), Authority Conflict (stubborn behavior, defiance/disobedience, and authority avoidance) and Serious Property Pathway (minor covert behavior, property damage, moderate serious delinquency and serious delinquency). Onset starts early and progresses over time. Darin also spoke about Principles of the Comprehensive Strategy, and Graduated Sanctions/Responses, developed over years of research by Wilson & Howell. One slide in the presentation showed Distribution of SPEP Scores (Standardized Program Evaluation Protocol) across JJ Programs in Arizona. The SPEP Score is based on four areas of information: service category, quality of service delivery, amount of service, and risk level of youth served. Programs that scored 50 or higher were better at preventing recidivism. The 20-year study showed that over time, serious and violent juvenile offenders will desist in offending for the most part, but there are a lot of victims along the way, and cost to taxpayers. By using the tools (the comprehensive strategy) a good graduated sanctions matrix and aligning programs that prove what works, can actually change the trajectory of the “age/crime curve” for an entire state.</p> <p>Discussion/Prioritization of Items for Juvenile Subcommittee – Pam Vickrey is the chair of the Juvenile Subcommittee. She indicated that the subcommittee would like the Commission to give them some direction because they have been discussing a lot of ideas for over a year but is not really sure what steps to take next. One discussion centered on the use of the PRA or the PSRA as the validation tool for the level of risk. Pam asked the Commission if this is something we should be tackling and to what degree? Darin Carver stated that we need to make sure that services are in place to help youth from coming back or reoffending more. Restoring funding is an issue. Pam noted that the guidelines refer to programming which has been lost due to budget cuts. When revising the guidelines, restoring funding is a high priority. Funding is needed for in-home services. Senator Davis, who is on the Child Welfare oversight committee stated he will work on putting a light on this issue. Should we get funding, would corresponding services be available? Darin said that the needs for funding and qualified programs that actually reduce recidivism are essential.</p> <p>Craig Barlow brought up the subject of a shortage of college students interested in the juvenile justice system. Paul Boyden discussed the issue of paying for counsel for juveniles (SB167) and the fact that some parents are concerned because they want their child to be held accountable and not have an attorney (knowing and intelligent/voluntary waiver of counsel). A report on indigent defense will be released in two weeks. Richard Mauro said that there are similar issues in the adult system and asked if the subcommittee would address that. He indicated that it is hard to imagine that if it is an issue in the adult system that a recommendation to move in a different direction for juvenile offenders would be appropriate. Pam also mentioned that the use of detention for status offenders is an issue and we need to look at how we are addressing status offenders.</p> <p>Peter Stirba made the motion that the Commission direct that the Juvenile Subcommittee come back to our December meeting with a recommendation that the Commission can vote on with respect to the guideline dispositional matrix. Craig Barlow seconded the motion which passed unanimously.</p> <p>Peter Stirba made the motion (referencing the statutory references and aggravating and mitigating circumstances that relate to sex offenses in the juvenile system) that the Juvenile Subcommittee would also come back to our December meeting with their recommendation that we can vote on with respect to those factors. Craig Barlow seconded the motion which passed unanimously.</p> <p>Peter Stirba made the motion that they come up with any legislative priorities that are relevant to this Commission that are important that the Commission consider, that they would also come back to us in December with their recommendation as to legislative priorities for the 2016 legislative session and for a vote. Al Emery seconded the motion which passed unanimously.</p>
Next Meeting	The next full meeting of the Sentencing Commission will be on December 2, 2015 at noon, Utah State Capitol Bldg, Senate Caucus Room.

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ